[DE] Federal Supreme Court weighs minor's right to informational self-determination against media freedom and freedom of expression

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Daniel Nikolaus Bittmann
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a ruling of 29 April 2014 (case no. VI ZR 137/13), the *Bundesgerichtshof* (Federal Supreme Court - BGH) granted an appeal filed by a magazine and dismissed a complaint lodged by the adopted child of a famous television presenter, who had sought an injunction against the publication of information about the parent/child relationship between them.

The plaintiff had been adopted by a famous TV presenter and his wife in 2000. Until 2009, details of the parent/child relationship between the adopted minor and the TV presenter, including the plaintiff's name and age and her parents' names, had been reported in various publications. In the 8 July 2011 edition of the magazine "Frau im Spiegel", the defendant had published a report entitled "Gefragt wie ein Popstar" ("Questioned like a pop star") concerning an appearance by the TV presenter at the Goethe University in Frankfurt am Main. In the article, the plaintiff's full name and age had been mentioned and, although the digits in her age had been mixed up, she had still been identifiable.

The *Landgericht Hamburg* (Hamburg District Court - LG) had ordered the defendant not to publicise the parent/child relationship between the plaintiff and the TV presenter (decision of 29 June 2012, case no. 324 O 201/12). The defendant's subsequent appeal to the Hanseatisches Oberlandesgericht (Hanseatic Appeal Court - OLG) had been rejected (decision of 18 December 2012, case no. 7 U 67/12).

The BGH upheld the defendant's appeal and dismissed the action brought by the TV presenter's adopted child. Unlike the LG and OLG, the BGH ruled that the plaintiff was not entitled to prevent the publication of details of her relationship to the TV presenter.

It was true that the plaintiff's general privacy rights, in particular her right to informational self-determination, had been infringed by the publication of her first name, age and relationship to the TV presenter in the defendant's magazine. However, this infringement was not unlawful since, in the weighing up process that was necessary because the right to privacy was a framework right, the defendant's right to freedom of expression and media freedom was outweighed

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by the plaintiff's right to privacy.

In the weighing up process, the fact that the plaintiff had been only 12 years old when the information had been published and had therefore merited special protection in view of her continuing development into an independent person had counted in her favour.

However, the decisive factor in the defendant's favour was the fact that the information concerning the plaintiff that had been published in the magazine had previously been widely reported and therefore had already shaped the public's view of the plaintiff. According to the LG's findings, to which the OLG referred in its decision, 11 press reports had been published in various high-circulation media accessible to a wide audience in 2000, 2001 and between 2006 and 2009. These articles about the TV presenter had mentioned the plaintiff's first name and age, as well as the parent/child relationship between the two of them.

Therefore, the plaintiff's name, age and relationship to the TV presenter had been known to a large number of people before the defendant had published this information. Since these people could themselves have passed this information on to third parties, the plaintiff had lost her anonymity before the disputed report had been published. In view of the short period of time between the most recent of these publications and the disputed report, the plaintiff had not yet regained her anonymity. Since the defendant's disputed report did not contain any new information, it did not constitute a separate infringement.

Contrary to the OLG's opinion, the publication of known information by the defendant did not become unlawful simply because there was no legitimate public interest and because the report about the TV presenter could have been published without revealing the plaintiff's first name and age.

It was true that the information about the plaintiff only added entertainment and descriptive value to the article about the TV presenter. However, even entertaining articles were protected under the freedom of expression and it was fundamental to the freedom of expression and media freedom that media should be able to decide according to their own editorial criteria what they considered to be in or outside of the public interest. Freedom of expression was not only designed to protect the public interest. Rather, its primary purpose was to guarantee the self-determination of individual holders of fundamental rights by enabling them to express their personality in communications with others. This in itself lent added importance to the freedom of expression when weighed against the general right to privacy, whereas any public interest merely increased the importance of this fundamental right even further.

Urteil des BGH vom 29. April 2014 (Az.: VI ZR 137/13)

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Bundesgerichtshof (Federal Supreme Court - BGH) decision of 29 April 2014 (case no. VI ZR 137/13)

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